

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	FCC 94-100
)	
Implementation of Sections 3(n))	
and 332 of the Communications Act)	GN Docket No. 93-252
)	
Regulatory Treatment of)	
Mobile Services)	

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To: The Commission

JUL 1 1 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARYREPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, submits the following reply comments in response to the comments filed in the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding.

Over fifty parties, including the RCA, filed comments in response to the FNPRM on June 20, 1994. The RCA replies to those comments with respect to two issues. First, the RCA supports those commenters who believe that no spectrum caps should be imposed on Commercial Mobile Radio Service ("CMRS") licensees. Second, the RCA rearticulates its position that spectrum caps, if adopted, should not be applied to cellular and other CMRS providers affiliated with rural telephone companies. In support whereof, the following is respectively shown:

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I. ADOPTION OF A GENERAL CMRS SPECTRUM CAP IS UNSUPPORTED

The majority of commenters addressing the issue of a generic CMRS spectrum cap in this proceeding are opposed to the concept.¹ Several other commenters have suggested that any form of spectrum cap should only be adopted on a service by service basis.² Other commenters have suggested that CMRS spectrum caps are only appropriate for broadband services.³ Finally, a handful of commenters support spectrum caps as long as the aggregation limit is modified.⁴

The RCA agrees with those commenters who oppose the application of a uniform spectrum cap for CMRS. The Commission's

¹ See Comments of GTE Service Corporation ("GTE") pp. 17-23; Comments of Comcast Corporation ("Comcast") pp. 1-13; Comments of Motorola, Inc. ("Motorola") pp. 1-13; Comments of Roseville Telephone Company ("Roseville") pp. 1-7; Comments of Pagemart, Inc. ("Pagemart") pp. 3-10; Comments of NYNEX Corporation ("NYNEX") pp. 1-3; Comments of Century Cellunet, Inc. ("Century") pp. 1-4; Comments of BellSouth ("BellSouth") pp. 6-12; Comments of Dial Page, Inc. ("Dial Page") pp. 2-3; Comments of Cellular Telecommunications Industry Association ("CTIA") p. 9; Comments of OneComm Corporation ("OneComm") pp. 7-11; Comments of Metrocall, Inc. ("Metrocall") pp. 21-22; Comments of Network USA ("Network USA") pp. 21-22; Comments of Celpage Inc. ("CelPage") pp. 21-22; Comments of RAM Technologies, Inc. ("RAM") pp. 20-21.

² See GTE pp. 18-19; Comments of Sprint Corporation ("Sprint") pp. 2-5; Comments of Brown & Schwaninger ("B&S") p. 16; Comments of Southwestern Bell Corporation ("SWB") pp. 4-9; OneComm pp. 9-10; and Motorola p. 7.

³ See Comments of Paging Network, Inc. ("PageNet") pp. 48-49; and Comments of RAM Mobile Data USA Limited Partnership ("RMD") pp. 14-15.

⁴ See Comments of Vanguard Cellular Systems, Inc. ("Vanguard") pp. 11-14 (advocates raising cap from 40 MHz to 50 MHz); Comments of The Southern Company ("Southern") pp. 14-19 (advocates reducing the 40 MHz spectrum cap for wide area SMR licensees so that scale economies are recognized in this frequency re-use environment).

assumptions regarding the CMRS marketplace and its anticipated development do not reflect the varied nature of CMRS. Furthermore, there has been no evidence proffered by the Commission nor any of the commenting parties indicating that all CMRS providers pose similar and significant anti-competitive risks when they hold more than 40 MHz of spectrum in a given geographic service area. An across-the-board CMRS cap at this juncture is premature and unwise and would inhibit competitive innovative new services rather than support them. Accordingly, the RCA urges the Commission not to adopt a generic CMRS spectrum cap.

II. IF ADOPTED, SPECTRUM CAPS SHOULD NOT APPLY TO RURAL TELEPHONE COMPANIES

The Commission specifically sought comment on the applicability of its proposed spectrum cap to designated entities which includes rural telephone companies, small businesses, minorities and women. See FNPRM at para. 103. Several commenters support exempting designated entities from spectrum aggregation limits.⁵ Only one commenter, American Personal Communications ("APC"), opposed exemptions for designated entities. APC stated that it is not "appropriate for the Commission to adopt across-the-board exceptions to these standards for designated entities, to the extent such exceptions are appropriate at all." (Comments of APC at p. 3). Without any supporting evidence, APC argues that "different services may require exceptions of different scope to

⁵ See Metrocall at p. 22; Network USA p. 22; Celpage p. 22; RAM p. 21.

facilitate the full participation of designated entities in those services; some services may lend themselves to such an exception while others may not. Any such exceptions, then, should be considered only in the course of service-specific rule making proceedings." Id. The RCA vehemently disagrees. The proposed spectrum cap, if adopted, will unnecessarily inhibit the provision of radio-based telecommunications services to rural America. With respect to rural telephone companies, there is no need to adopt exception rules on a service-specific basis because the only likely provider of CMRS in rural areas will be rural telephone companies. Therefore, it is more appropriate for the Commission to adopt a generic rule that will consistently exempt rural telephone companies from the spectrum cap.

As advocated by the RCA in its Comments in this proceeding, placing a spectrum cap on rural telephone companies would violate the congressional directive set forth in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") which requires the FCC to adopt rules that ensure that spectrum is awarded in a manner that promotes the provision of service to rural America and the participation by rural telephone companies in the provision of that service. The application of such a cap would, by limiting the amount of spectrum which could be held by rural telephone companies, not only limit such companies' participation in the provision of new services, but, because such companies are historically the only entities which have provided service to rural America, would also prevent residents and businesses located in

rural America from obtaining the benefits of new service offerings.

If a spectrum cap is adopted, the RCA urges the Commission to completely exempt rural telephone companies from its application. Merely raising the cellular ownership attribution level from 20 percent to 40 percent as was done in the PCS rulemaking proceeding⁶ does not solve the problem. Many rural telephone companies hold more than a 40 percent ownership interest in the cellular licenses within their rural cellular areas. Limiting rural telephone companies with cellular interests to an additional 15 MHz of all other CMRS spectrum would mean that many CMRS services will not be able to be provided to rural America by the only likely provider of such services.

Surely, the Commission's positive experience with the rapid and efficient provision of rural cellular radio service by rural telephone companies confirms the validity of awarding special consideration with respect to the spectrum cap issue. The RCA implores the Commission to consider that to the extent that the proposed spectrum aggregation limits may produce any public interest benefit, any such benefit will be outweighed by the detriment which would result from the application of the restrictions to rural telephone companies.

⁶ "In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion & Order," General Docket No. 90-314 (released June 13, 1994) ("MO&O").

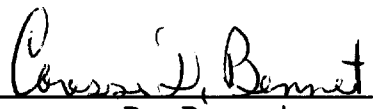
III. CONCLUSION

In sum, entities which qualify as "rural telephone companies" should not be frustrated in their attempt to continue their commitment to bring new technologies to rural America simply because of their prior record of fulfillment of their commitment to rural America. The Commission's proposed CMRS spectrum cap, by limiting rural telephone company participation, would severely limit the provision of CMRS services to rural America. Therefore, the RCA beseeches the Commission not to adopt rules that will deny residents and businesses located in rural America the benefits of new technologies merely by virtue of their location.

Respectfully submitted,

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